

**BEFORE THE  
ADMINISTRATIVE RULES COMMITTEE  
OF THE NORTH DAKOTA LEGISLATIVE COUNCIL**

<b>Amendments to N.D. Admin. Code</b>	)	
<b>Chapter 75-02-04.1, Child Support</b>	)	
<b>Guidelines</b>	)	<u><b>REPORT OF THE</b></u>
<b>(Pages 179-199)</b>	)	<u><b>DEPT. OF HUMAN SERVICES</b></u>
		<b>November 19, 2003</b>

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**For its report, the North Dakota Department of Human Services states:**

- 1. One of the amendments to these rules resulted from statutory changes made by the 2001 Legislative Assembly which passed Senate Bill no. 2373 regarding atypical overtime wages and nonrecurring bonuses.**
  
- 2. These rules are related to 42 U.S.C. § 667 (federal statute) and 45 C.F.R. § 302.56 (federal regulation).**
  
- 3. The Department of Human Services uses direct mail and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The department uses a "basic" mailing list for each rulemaking project that includes the county social service boards, the regional human service centers, all Legal Aid offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the department. Additionally, the department constructs relevant mailing lists for specific rulemaking. The mailing list for this particular rulemaking project included North Dakota supreme court justices, district court judges and judicial referees, State's Attorneys, Regional Child Support Enforcement Units, members of the Family Law Section of the State Bar Association of North Dakota, and other interested persons. The department also places public**

announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The department conducts public hearings on all substantive rule-making. Oral comments are recorded. After the hearing, oral comments as well as any written comments that have been received are summarized and presented to the department's executive director, together with any response to the comments that may seem appropriate and a redrafted rule incorporating any change occasioned by the comments. Two public hearings were held: one in Bismarck on September 17, 2002, and one in Fargo on September 19, 2002.

4. The department received comments from nineteen individuals. Comments were received at both public hearings and written comments were also received. As required by law, the department fully considered each comment. A summary of the comments is attached to this report. The summary identifies each commentor, describes each comment, explains the department's response and identifies changes made in the rules to address comments.
5. The approximate cost of giving public notice and holding the hearings was \$1,517.
6. The amendments to North Dakota Administrative Code chapter 75-02-04.1(Child Support Guidelines) are found in pages 179 through 199 of your materials.

States are required by federal law and regulation to establish guidelines for setting and adjusting child support award amounts and to review those guidelines at least every four years. N.D.C.C. § 14-09-09.7(4) required the Department of Human Services to institute a new rulemaking proceeding concerning the Child Support Guidelines by August 1, 1998, and every four years thereafter. The last review of the Guidelines began in 1998 with amendments effective in 1999. Before commencing the Child Support Guidelines review required by this state law, the Department must convene a Drafting Advisory Committee that includes two legislators appointed by the Chairman of the Legislative Council.

The Drafting Advisory Committee gave its formal advice to the Department regarding suggested amendments to the guidelines. The Committee completed its work and was dissolved on June 25, 2002. The amendments proposed were those recommended by the Drafting Advisory Committee. There were numerous changes that resulted from the Drafting Advisory Committee recommendations and the comments received. The Department also considered several bills that were introduced during the 2003 Legislative Assembly which had the potential to impact the guidelines. However, it was determined that none of the bills passed during the 2003 Legislative Session regarding child support necessitated changes to the guidelines.

Changes to this chapter include clarification of definitions and rules relating to the calculation of income, a requirement of determination of a support amount in equal physical custody cases, the addition of rebuttal criteria for atypical overtime or nonrecurring bonuses over which the obligor does not have significant influence or control, and

the addition of directions regarding when rebuttal criteria amounts are to be added to the child support amount or added to or deducted from the obligor's net income.

**75-02-04.1-01.** The definition of gross income was amended to clarify that receipt of previously deferred income will be counted as gross income only to the extent not previously considered and that all refundable tax credits will be counted as gross income; "in-kind income" was amended to limit it to income from employment or income-producing activity; "net income" was amended to clarify how the hypothetical federal income tax obligation is to be calculated, how tax exemptions and child tax credits are to be applied, that self-employment tax is to be subtracted from total gross annual income, and how health insurance premium payments will be deducted; and a definition of "self-employment" was added. The definitions of "obligee" and "obligor" were updated and the definition of "split custody" was revised slightly.

**75-02-04.1-02.** Subsection one was amended to provide that calculation of child support amounts does not assume that one parent acts as the primary caregiver in those situations where each parent has equal physical custody and subsection seven was amended to clarify that income must be sufficiently documented.

**75-02-04.1-03.** This section was amended to change child support "amount" to child support "obligation".

**75-02-04.1-05.** This section was amended to clarify how net income from self-employment will be calculated; to specifically provide for a reduction in total income of income that has not been distributed from a partnership or small business corporation over which the obligor is not able to exercise direct or indirect control to a significant extent; to increase income by a portion of the taxable income of a corporation that pays its own tax over which the obligor is able to exercise direct or indirect control to a significant extent; to clarify that income from each self-employment activity must be averaged separately; to allow a period of less than five years to be used to average self-employment income when self-employment activity has not been operated on a substantially similar scale for five years; to clarify that when averaging income, any income amount included in one year may not be included for any other year during the period being averaged; and to specify when self-employment losses may be used to reduce income that is not from self-employment.

**75-02-04.1-06.** This section was amended to clarify that the cost of supporting a child living with the obligor who is not also a child of the obligee may be deducted from net income.

**75-02-04.1-06.1.** A new subsection was added to provide that only children for whom an obligor owes a currently support obligation pursuant to a support order and other children of the obligor under age eighteen may be considered when determining the amount of support due in multiple-family cases.

**75-02-04.1-07.** Subsections two and three were amended to clarify that the federal hourly minimum wage is based on a monthly amount.

**75-02-04.1-08.2.** This section was added to provide how a child support obligation shall be determined when a court orders each parent to have equal physical custody of their child or children.

**75-02-04.1-09.** Subsection two was amended to provide for a deviation for the increased ability of an obligor with a monthly net income of \$12,500; to clarify how to calculate the reduced ability of an obligor due to visitation-related travel expenses; to include a provision for reduced ability of an obligor due to atypical overtime

wages or nonrecurring bonuses over which the obligor does not have significant influence or control; to provide that spousal support payments may not be a basis for a deviation under subdivision j of subsection 2; to provide that the deviations described in subdivisions a through f of subsection two shall be made to the child support amount; and to provide that the deviations described in subdivisions g through l of subsection two are to be made to the obligor's net income.

**75-02-04.1-10.** The chart containing the child support amount was amended to include a child support amount for monthly net incomes of \$10,100 through \$12,500 or more.

**75-02-04.1-11.** This section was amended to provide that the number of children to be counted when determining a child support amount for a child in foster care or guardianship care is the total number of children to whom the parent owes a duty of support and to clarify how the support amount is to be calculated.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are anticipated to have a significant fiscal impact on the regulated community. A regulatory analysis was prepared and is attached to this report.

8. A regulatory analysis or economic impact statement of impact on small entities was not required by N.D.C.C. § 28-32-08.1 because these rules were adopted before the effective date of that statute.
9. A constitutional takings assessment was prepared and is attached to this report.
10. These rules were not adopted as emergency (interim final) rules.

**Prepared by:**

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November 19, 2003**